VZCZCXRO4778
PP RUEHAG RUEHDF RUEHIK RUEHLZ RUEHROV RUEHSR
DE RUEHBS #0171/01 0371128
ZNR UUUUU ZZH
P 061128Z FEB 09
FM USEU BRUSSELS
TO RUEHC/SECSTATE WASHDC PRIORITY
RUCPDOC/DEPT OF COMMERCE WASHDC
RUEATRS/DEPT OF TREASURY WASHDC
INFO RUCNMEM/EU MEMBER STATES COLLECTIVE

UNCLAS SECTION 01 OF 17 BRUSSELS 000171

SIPDIS

STATE FOR EEB/IFD/OIA, EUR/ERA
TREASURY FOR DO/JMACLAUGHLIN
USDOC FOR ITA/JKOZLOWICKI
PLEASE PASS TO USTR

E.O. 12958: N/A
TAGS: EINV EFIN ETRD ELAB PGOV OPIC BE
SUBJECT: EU INVESTMENT CLIMATE STATEMENT, 2009

REF: 08 STATE 123907

¶1. Per reftel, this is the 2009 Investment Climate Statement for the European Union. Post will email Word versions as instructed in reftel. The statement covers the following categories:

--Openness to Foreign Investment
Q-Conversion and Transfer Policies
--Expropriation and Compensation
--Dispute Settlement
--Performance Requirements and Incentives
--Right to Private Ownership and Establishment
--Protection of Property Rights
--Transparency of Regulatory System
--Efficient Capital Markets and Portfolio Investment
--Political Violence
--Corruption
--Bilateral Investment Agreements
--OPIC and Other Investment Insurance Programs
--Labor
--Foreign-Trade Zones/Free Ports
--Foreign Direct Investment Statistics
--Web Resources

OPENNESS TO FOREIGN INVESTMENT

EU Treaty Provisions Governing Investment/Historical Background

¶2. The European Union has perhaps one of the most hospitable climates for U.S. investment in the world, with the historical book value of U.S. investment in the 27 EU member states exceeding $1 trillion. This is a result, in part, of the process of European integration. The 1957 Treaty of Rome (now known as the EU Treaty) established the European Community (now Union). EU Treaty Article 43 requires EU Member States to provide national treatment to investors from other Member States regarding the establishment and conduct of business. In addition, the EU Treaty creates "four freedoms" (free movement of capital, labor, goods and persons) within the European Union. The free movement of capital in particular benefits all potential investors, whether they originate from an EU Member State or not. The EU Treaty also grants investors national treatment. Finally, any violation of these rights can be adjudicated by the European Court of Justice, which may hear cases related to violations of Treaty rights directly, or overturn national court decisions found inconsistent with the Treaty. This was a remarkable achievement, given that the

six original signatories to the Treaty had been at war with one another a decade previously.

¶3. The 1986 Single European Act further reduced barriers to intra-EU investment and legislation adopted subsequently even created opportunities for companies from one Member State to receive better than national treatment in another Member State. For example, in the financial services sector, German universal banks can conduct securities business freely in other Member States, even if local banks are not allowed to offer these services domestically by their local licensing authority.

¶4. Prior to the 1992 Treaty on the European Union, the Community itself had virtually no role in determining the conditions that would affect the entry of investors from third countries into the territories of the Member States. While the Member States were compelled by the Treaty to grant national treatment to investors from other EU countries, they could erect and maintain barriers to investors from non-EU countries, consistent with their international obligations. These obligations include the Treaties of Friendship, Commerce and Navigation (FCNs) which the United States has with most EU countries, as well as obligations under the OECD codes on capital movements and invisible transactions. The only role Community law played was to ensure that a foreign-owned company that was established in one Member State received non-discriminatory treatment in other Member States, as

mandated under Article 43 of the EU Treaty.

¶5. The EU's ability to regulate Member State treatment of incoming foreign investment increased considerably in 1993. In that year, an EU Treaty revision abolished all restrictions on the movement of capital (including direct investment operations), both between EU Member States and between Member States and third countries (Article 56). However, EU Member State measures in force on December 31, 1993 denying national treatment to third-country investors were grandfathered. The Treaty (Article 57) now expressly provides for the adoption of common regimes in these areas: "The Council may, acting by a qualified majority on a proposal from the Commission, adopt measures on the movement of capital to or from third countries involving direct investment establishment, the provision of financial services or the admission of securities to capital markets. Unanimity shall be required for measures under this paragraph which constitute a step back in Community law as regards the liberalization of the movement of capital to or from third countries."

¶6. In June 1997, the European Commission issued an interpretative communication clarifying the scope of EU Treaty provisions on capital movements and the right of establishment. The Commission was reacting to limits that certain Member States had imposed on the number of voting shares that investors from other Member States could acquire during privatization. The Commission stressed that free movement of capital and freedom of establishment constitute fundamental and directly applicable freedoms established by the EU Treaty. Nationals of other Member States should, therefore, be free to acquire controlling stakes, exercise the voting rights attached to these stakes and manage domestic companies under the same conditions laid down in a Member State for its own nationals. The European Court of Justice ruled in three precedent-setting cases in 2002 against golden shares in France,

Belgium and Portugal, triggering a number of infringement actions by the Commission. The Court has subsequently ruled against golden share cases in several other Member States.

¶7. In June 2007, a new EU Directive to strengthen investor-voting rights across borders came into force. The Directive bolsters cross-border investment by abolishing shareholder-voting impediments that were then prevalent in several Member States, such as the inability to vote electronically or by proxy. It is too soon to know how the Directive will be implemented by the affected Member States and whether the Commission will need to take legal action to compel implementation.

¶8. On November 1, 2007, the EU's Markets in Financial Instruments Directive (MiFID) came into force. The law seeks to eliminate many barriers to cross-border stock trading by establishing a common framework for European securities markets, increasing competition between market exchanges, raising investor protection and providing investors a broader range of trading venues. It gives EU securities exchanges, multilateral trading facilities and investment firms a "single passport" to operate throughout the EU on the basis of authorization in their home Member States. MiFID is broadly considered a success. At the Commission's request, and in order to identify possible areas of improvement, the Qmmittee of European Securities Regulators (CESR) is currently carrying out an evaluation of MiFID's impact. The results will be published in the spring of 2009.

¶9. In January, 2008, the European Commission proposed to remove barriers to cross-border venture capital investment and fundraisingQ The Commission proposal would authorize national regulators to recognize venture capital funds operating in other EU Member States in order to help innovative small businesses access risk capital. The Commission invited Member States, when reviewing existing or

adopting new legislation, to enable cross-border operations and consider mutual recognition of venture capital funds.

U.S.-EU Efforts to Promote Open Investment

¶10. On November 9, 2007, the United States and the European Commission under the umbrella of the Transatlantic Economic Council (TEC) launched the "U.S.QEU Investment Dialogue" to reduce barriers to transatlantic investment and promote open investment regimes globally. The Dialogue has met several times, most recently in October 2008. The Dialogue prepared and recommended to the TEC an Open Investment Statement, which was adopted at the June 2008 U.S.-EU Summit. The Dialogue's ongoing work plan includes: 1) reviewing global investment trends, including sovereign wealth investment; 2) identifying and discussing issues of concern with respect to bilateral investment; 3) developing lists of priority third country investment barriers and discussing ways to address them; and 4) facilitating progress on investment issues in the OECD. The United States and the EU continue to discuss the EU's evolving role with respect to foreign investment in other fora as well.

EU Responses to the Financial Crisis

¶11. In response to the global financial crisis

hitting Europe directly in fall 2008, the Commission put forward a number of legislative proposals to address what was increasingly perceived as an unacceptable degree of deregulation in the financial sector, particularly in the wake of massive injections of public money to rescue financial institutions.

Credit Rating Agencies (CRAs): On November 12, 2008, the Commission proposed a new Regulation that seeks to harmonize rules on CRAs throughout the EU, ensuring that ratings are not affected by conflicts of interest, that CRAs defend the quality of their ratings and rating methodology, and that they act transparently. The proposal calls for all CRAs whose ratings are used in Europe be registered in the EU and subject to European supervision and that they submit to stringent corporate governance rules, and forbids financial institutions in Europe to trade rated instruments without that instrument carrying a rating from an-EU registered CRA. The Commission aims for adoption before the summer of ¶2009.

Deposit Insurance: In December 2008, the Council and Parliament approved a Commission proposal to raise the minimum threshold for deposit insurance to 100,000 in two steps, and to harmonize the time period for repayment of deposits. As a result, minimum deposit guarantees will be raised to 50,000 as of June 30, 2009, and the payout period shortened from the current three months to 20 days. Coverage will apply to all depositors in all Member States, regardless whether the currency is the Euro or not. The threshold will be raised to 100,000 on January 1, 2010.

Hedge Funds: In 2008, the European Parliament asked the Commission to enhance regulation of hedge funds and private equity funds. In December 2008 the Commission launched a public consultation to develop a broad definition of hedge funds and to seek comments on the following issues: (1) systemic risk; (2) market integrity and efficiency; (3) risk management; and (4) transparency. Results of the consultation are expected in February 2009. The consultation will serve as the basis for EU legislative proposals as well as for EU input into parallel reflections on hedge funds by the G-20.

Ownership Restrictions and Reciprocity Provisions

¶12. EU Treaty Articles 43 (establishment) and 56/57 (capital movements) have helped the EU to create one of the most hospitable legal frameworks for U.S. investment in the world. However, restrictions on

foreign direct investment do exist and others have been proposed.

¶13. Under EU law, the right to provide aviation transport services within the EU is reserved to firms majority-owned and controlled by EU nationals. The right to provide maritime transport services within certain EU Member States is also restricted. Currently, EU banking, insurance and investment services directives include "reciprocal" national treatment clauses, under which financial services firms from a third country may be denied the right to establish a new business in the EU if the EU determines that the investor's home country denies national treatment to EU service providers. In addition, as with the United States, a number of regulatory measures, particularly in the financial sector, are also subject to "prudential exceptions"

and thus are not covered by these GATS commitments.

¶14. After years of discussion, in March 2004, the Council of Ministers approved a Directive on takeover bids ("Takeover Directive"). This Directive seeks to create favorable regulatory conditions for takeovers and to boost corporate restructuring within the EU. The Directive authorizes Member States and companies to ban corporate defensive measures (e.g. "poison pills" or multiple voting rights) against hostile takeovers. It includes a "reciprocity" provision to allow companies that otherwise prohibit defensive measures to sue if the potential suitor operates in a jurisdiction that permits takeover defenses. Article 12.3 of the final text is ambiguous as to whether the reciprocity principle would apply to non-EU firms. However, the preamble states that application of the optional measures is without prejudice to international agreements to which the EC is a party. France has indicated its intent to apply reciprocity to third countries. Some other Member States appear to be leaning in the same direction.

¶15. The Takeover Directive was due to be implemented by Member States by May 20, 2006, but full implementation was delayed. By February 2007, seventeen Member States had transposed the Directive or adopted necessary framework rules. Belgium and the Netherlands implemented the directive in April and October 2007 respectively. Other Member States implemented the Directive in late 2007 and throughout 2008.

Energy Sector Liberalization

¶16. In September 2007, the European Commission introduced legislation intended to increase competition and investment in the gas and electricity sectors, featuring controversial plans to separate the production and distribution arms of large integrated energy firms. After a year of negotiation over competing proposals, the French Presidency of the EU forged a political compromise during the EU Energy Ministers meeting of October 10, 2008. France and Germany successfully led a coalition against the Commission's plan to force integrated firms to sell off their transmission operations to keep them separate from energy production. Under the agreement, French and German EDF, GDF, and RWE can retain ownership of their gas and electricity grids, although operations are meant to be completely independent and this is subject to outside supervision. However, these monopolies cannot buy up transmission businesses in European countries where full unbundling has been introduced.

¶17. Germany also succeeded in pushing through a weaker version of the "third coQtry" clause whereby Member States would have the authority to review acquisitions of unbundled assets by third countries with a requirement that the Commission must be consulted to determine whether the acquisition would "put at risk the security of energy supply to the Community." The Commission decision is only advisory, however. The French led internal energy market compromise will now go to Parliament for

approval, which could prove difficult before Parliamentary elections in June 2009.

CONVERSION AND TRANSFER POLICIES

¶18. Europe's single currency, the Euro, and the eleven remaining national EU Member State currencies are freely convertible. The EU, like the U.S. places virtually no restrictions on capital movements. Article 56 of the EU Treaty specifically prohibits restrictions on the movement of capital and payments between Member States and between Member States and third countries, with the grandfathered exceptions noted above. The adoption of the Euro in 16 of the 27 EU Member States has shifted currency management and control of monetary policy to the European Central Bank (ECB) and the EU Council of Ministers. In recent years, EU members Malta and Cyprus adopted the Euro on January 1, 2008; Slovakia adopted the currency a year later, on January 1, 2009.

¶19. Remaining new EU Member States must join the Euro upon meeting specific economic convergence criteria although no time limit is placed for the application procesQo be completed. The global financial crisis has led some countries outside of the Eurozone to consider accelerating entry into the zone. The crisis has caused public opinion in Denmark, for example, which previously opted against Eurozone entry, to swing toward Euro adoption, and the Danish government may hold a new referendum on the issue. Poland, the Czech Republic and the Baltic states are considering when they might be able to join the Eurozone.

EXPROPRIATION AND COMPENSATION

¶20. The European Union does not have the authority to expropriate property; this remains the exclusive competence of the Member States.

DISPUTE SETTLEMENT

¶21. Foreign investors can, and do, take disputes against Member State governments directly to local courts. In addition, any violation of a right guaranteed under the EU law - which has been ruled supreme to Member State law, including constitutional law - can be heard in local courts or addressed directly by a foreign investor with a presence in a Member State to the European Court of Justice. Further, all EU Member States are members of the World Bank's International Center for the Settlement of Investment Disputes (ICSID), and most have consented to ICSID arbitration of investment disputes in the context of individual bilateral investment treaties. While the EU is not itself a party to ICSID or other such arbitration conventions, it has stated its willingness to have investment disputes subject to international arbitration.

PERFORMANCE REQUIREMENTS AND INCENTIVES

¶22. As the ten-year anniversary Q January 1, 2009 - of the implementation of European Economic and Monetary Union approached, political interest in a coordinated tax policy grew among some EU officials. However, Charlie McCreevy, Commissioner for the Internal Market and Services, has flatly rejected legislation to move toward tax harmonization across Member States. A number of key Member States also object to proposals that would create a "common consolidated tax basis" across borders for European countries. European Union grant and subsidy programs are generally available only for nationals and companies based in the EU, but usually on a national treatment basis. For more information, see Chapter 7 "Trade and Project Financing" as well as

individual Country Commercial Guides for Member State practices.

RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

¶23. The right to private ownership is firmly established in EU law, as well as in the law of the individual Member States. See individual country commercial guides for Member State practices.

PROTECTION OF PROPERTY RIGHTS

¶24. The EU and its Member States support strong protection for intellectual property rights (IPR) and other property rights. The EU and/or its Member States adhere to all major intellectual property rights agreements and offer strong IPR protection, including implementation of the WTO TRIPS provisions. Together, the U.S. and the EU have committed to enforcing IPR in third countries and at our borders in the EU-U.S. Action Strategy endorsed at the June 2006 U.S.-EU Summit.

¶25. On October 23, 2007, the U.S. and key trading partners announced their intention to negotiate an Anti-Counterfeiting Trade Agreement (ACTA) in order to bolster efforts to combat counterfeiting and piracy by identifying a new, higher benchmark for enforcement that countries can join on a voluntary basis. There have been four rounds of ACTA negotiations, the last held in Paris in December, 2008, with no agreement reached as of this writing. Talks will continue in 2009, with the next round scheduled for Morocco in March.

¶26. Despite overall strong support for IPR enforcement, several EU Member States have been identified in the U.S. Special 301 process due to concerns with protection of certain intellectual property rights. The United States continues to be engaged with the EU and individual Member States on these matters.

Enforcement of Intellectual and Industrial Property Rights

¶27. In April 2004, the EU adopted a Directive on the enforcement of intellectual and industrial property rights such as copyright and related rights, trademarks, designs, and patents. This Directive requires Member States to apply effective and proportionate remedies and penalties that form a deterrent against those engaged in counterfeiting and piracy. Member States are required to have a similar set of measures, procedures, and remedies available for right holders to defend their IPR. The Directive includes procedures covering evidence and measures such as injunctions and seizures. Remedies available to right holders include the destruction, recall, or permanent removal from the market of illegal goods, as well as financial compensation, injunctions, and damages. There is a right to information allowing judges to order certain persons to reveal the names and addresses of those involved in distributing illegal goods or services, along with details of the quantities and prices involved.

¶28. Under the Directive, Member States are required to appoint national correspondents to cooperate and exchange information with other Member States and with the Commission. The Directive takes on

additional importance because of the expansion through EU enlargement of the EU's borders to the east, which moves them closer to countries such as Russia that have been a persistent source of pirated CDs and DVDs. Member States were supposed to have implemented the Directive by April 2006. At present, all but two states have transposed the legislation, with Sweden's law taking effect in April, 2009 and Luxembourg's to follow in May, 2009.

¶29. On January 3, 2008, the European Commission released a Communication on Creative Content online. The Commission wants to encourage the content industry, telecoms companies and Internet service

providers to work together closely to make available more content online while at the same time ensuring a robust protection of intellectual property rights. It identifies legal offers and piracy as one of the four main challenges and suggests the promotion of codes of conduct between all stakeholders could be welcomed.

¶30. On January 29, 2008, the European Court of Justice (ECJ) issued an important decision confirming that EU rules do not require countries to disclose names of Internet file sharers in civil cases. The Spanish firm Promusicae and other European rights holders had hoped that the ECJ would rule that Telefonica (a Spanish Internet service provider) had to provide the proper data to protect its property rights. This was the expected finding as the European Advocate General's opinion had said as much in July 2007. The Court, however, said that Member States could Q but do not have to - require communication of personal data to ensure effective copyright protection in the context of civil proceedings as long as such national laws are not in conflict with the fundamental EU rights of respect for private life and protection of personal data.

¶31. The Commission held a High Level Conference on Counterfeiting and Piracy May, 15, 2008. The Conference was billed as the "starting point of a process towards a long lasting strategy mobilizing both industry and public authorities to jointly combat counterfeiting and piracy." A follow-up conference is planned for spring 2009.

Criminal Enforcement

¶32. On November 23, 2005, the European Commission adopted a Communication outlining seven existing legislative acts that needed to be revised to include criminal sanctions in case of infringements. Affected areas include money laundering, intellectual property violations, corruption, human trafficking, maritime pollution, Euro counterfeiting, and Internet-related infringements. The Communication was adopted within the context of a European Court of Justice ruling that the Commission had the right to set criminal sanctions for breaches of legislation in policy areas where the EU law has primacy (i.e. first pillar), which Member States must then enforce. According to the Communication, the Commission will establish criminal penalties that must be enforced by Member States. Governments not enforcing them will be brought to the EU Court of Justice. In light of the ECJ ruling, the Commission on April 26, 2006, reissued a proposed Directive on criminal measures to enforce IPR. Since the revision, another ECJ case strengthened the Commission position regarding its competence to initiate directives on criminal enforcement; however, this newer case also ruled out

mandating particular sanction levels. The proposal was supported by the Council in September 2008 and is currently under consideration by the European Parliament.

¶33. Copyright: In 2001, the EU adopted Directive 2001/29 establishing pan-EU rules on copyright and related rights in the information society. In December 2006, the Council and Parliament passed an updated version of the 2001 Copyright Directive modified to clarify terms of copyright protection. This new Directive entered into force on January 17, ¶2007. The Directive is meant to provide a secure environment for cross-border trade in copyright-protected goods and services, and to facilitate the development of electronic commerce in the field of new and multimedia products and services. Authors' exclusive reproduction rights are guaranteed with a single mandatory exception for technical copies, and an exhaustive list of exceptions to copyrigh which are optional for Member States in term of including them in national law.

¶34. In April 2004, Directive 2004/48, designed to harmonize civil and administrative IP measures, procedures, and remedies, was adopted at the EU

level. That directive has been adopted by almost all member states. Sweden implemented the Directive on January 1 2009, after a May 2008 European Court Ruling directing Sweden to do so, leaving Luxembourg as the only Member State not implementing. The Commission released a comprehensive anti-counterfeiting plan, including criminal enforcement of IPR, which was supported by the Council in September 2008. The trademark and copyright community would like to see the Directive succeed, but not if greatly weakened. The Directive could facilitate cross-border enforcement.

¶35. The January 2008 Commission Communication on creative content online also discusses aspects of legal offers and piracy. The Commission followed with a Communication on July 16, 2008 outlining an industrial property rights strategy for Europe, calling for development of a horizontal and integrated strategy across the spectrum of industrial property rights. This includes the launch of a Commission study on patent quality, as well as an evaluation of the overall functioning of Community and Member State trademark systems. On September 26, 2008, the European Union Competiveness Council adopted a resolution endorsing the Commission's approach and encouraging the Commission and Member States to step up the protection of intellectual property rights internationally and within the internal market.

¶36. Trademarks: Registration of trademarks with the European Union's Office for Harmonization in the Internal Market (OHIM) began in 1996. OHIM issues a single Community Trademark (CTM) that is valid in all EU Member States. On October 1, 2004, the EC acceded to the World Intellectual Property Organization (WIPO) Madrid Protocol. The accession of the EC to the Madrid Protocol established a link between the Madrid Protocol system, administered by WIPO, and the Community Trademark system, administered by OHIM. Since October 2004, Community Trademark applicants and holders have been allowed to apply for international protection of their trademarks through the filing of an international application under the Madrid Protocol. Conversely, holders of international registrations under the Madrid Protocol are entitled to apply for protection

of their trademarks under the Community trademark system. The link between the OHIM and the WIPO registration systems allows firms to profit simultaneously from the advantages of each, while also reducing costs and simplifying administrative requirements.

¶37. Designs: The EU adopted a Regulation introducing a single Community system for the protection of designs in December 2001. The Regulation provides for two types of design protection, directly applicable in each EU Member State: the Registered Community Design (RCD) and the unregistered Community design. Under the Registered Community Design system, holders of eligible designs can use an inexpensive procedure to register them with the EU's Office for Harmonization in the Internal Market (OHIM) based in Alicante, Spain. They will then be granted exclusive rights to use the designs anywhere in the EU for up to twenty-five years. Unregistered Community designs that meet the Regulation's requirements are automatically protected for three years from the date of disclosure of the design to the public. Protection for any registered Community design was automatically extended to Romania and Bulgaria when those countries acceded to the European Union on January 1, 2007.

¶38. In September 2007, the EU acceded to the Geneva Act of the Hague Agreement concerning international registration of industrial designs. This allows EU companies to obtain protection for designs in any country that belongs to the Geneva Act, reducing costs for international protection. The system became operational for businesses on January 1, ¶2008. In April, 2008, OHIM updated the guidelines for renewal of Registered Community Designs.

¶39. Patents: It is not yet possible to file for a single EU-wide patent that would be administered and enforced in all EU member states. The most effective way to secure a patent across a range of EU national markets is to use the services of the European Patent Office (EPO). EPO offers a one-stop-shop that enables right holders to obtain various national patents using a single application. However, these national patents have to be validated, maintained and litigated separately in each Member State. Although the European Commission proposed a regulation in 2000 (COM 412) on the institutional framework regarding the establishment of a community patent, the Council has repeatedly failed to reach agreement on the dossier. The main outstanding issues relate to the translation of patent claims and litigation options. The Union has so far also failed to set up a streamlined system for the resolution of patent disputes. The Council rejected a Commission request for a mandate to negotiate an EU patent litigation agreement in December 2006.

¶40. In March 2007, the Commission released a Communication (COM 2007/165) restating the Commission position that it would not abandon the Community patent and European Patent Litigation Agreement (EPLA) proposals. In September, 2008, the EPO and the U.S. Patent and Trademark Office (USPTO) launched the Patent Prosecution Highway, a joint trial initiative that leverages fast-track patent examination procedures already available in both offices to allow applicants to obtain corresponding patents faster and more efficiently. This will permit each office to exploit the work previously

done by the other office and reduce duplication. In addition, the two offices, along with the patent offices of Japan, Korea, and China announced a joint agreement (IP5) in November to move forward on work sharing and to undertake a number of projects to harmonize the environment for work sharing and eliminate unnecessary duplication of work.

¶41. Geographical Indications: The United States has long had concerns that the EU's system for the protection of geographical indications, reflected in Community Regulation 1493/99 for wines and spirits and in previous Regulation 2081/92 for certain other agricultural products and foodstuffs, appears to fall short of what is required under the TRIPS Agreement. As a result of a WTO dispute launched by the United States, the WTO Dispute Settlement Body (DSB) ruled on April 20, 2005, that EC regulation of food-related geographical indications (GIs) was inconsistent with the EC's obligations under the TRIPS Agreement and the GATT 1994. In its report, the DSB determined that the EC's GI regulation impermissibly discriminated against non-EC products and persons, and that the regulation could not create broad exceptions to trademark rights guaranteed by the TRIPS Agreement.

¶42. In response, the EC published an amended GI regulation in April 2006 intended to implement the DSB's recommendations and rulings. The United States retains concerns about this amended regulation and is closely monitoring its application. In addition, similar provisions are appearing in regulations governing other products, such as wine and spirits, and the United States will be carefully monitoring developments in those areas as well.

¶43. EU International Efforts to expand GI protection: The EU continues to press forward with its campaign to have its geographical indications protected throughout the world without regard to consumer expectation in individual markets, and to expand the negotiations for a registry of geographical indications beyond wines and spirits to other foodstuffs. This has developed as a major EU priority in the context of the Doha Development Agenda negotiations in the WTO, in which a discussion is ongoing concerning the extension of so-called "additional" GI protection to products in

addition to wine and spirits. The U.S. and other WTO members continue to oppose the EU's proposals to extend "additional" GI protection, noting that the objective of effective protection of such indications can be accomplished through existing GI obligations.

¶44. U.S.-EU coordination on IP counterfeiting and piracy: Since the U.S.-EU summit of June 2005, where leaders agreed to more closely cooperate on IPR enforcement, the U.S. and the EU have intensified customs cooperation and border enforcement, strengthened cooperation with and in third countries, and built public-private partnerships and awareness raising activities together. The U.S.-EU action strategy for the enforcement of intellectual property was launched at the US-EU Summit in June ¶2006. Since then, there have been bi-annual meetings between officials and between officials and rights holders to continue to identify new areas for cooperation including capacity building, joint messaging and coordinated border actions. On February 22, 2008, the United States and European Union announced the results of Operation

Infrastructure, the first joint IPR operation undertaken by the U.S. Customs and Border Protection and the EU. The operation resulted in the seizure of over 360,000 counterfeit integrated circuits and computer network components bearing more than 40 different trademarks.

TRANSPARENCY OF REGULATORY SYSTEM

¶45. While generally considered transparent, in that all laws and regulations are published in the Official Journal of the European Communities, the EU has worked to improve transparency and simplify its regulatory system. Building on the 2002 Better Regulation Action Plan, and the 2003 Inter-Institutional Agreement on Better Lawmaking, the EU has made both transparency and smart regulation the themes of its regulatory efforts since 2005.

¶46. In November 2005, the European Commission adopted a Communication launching a European Transparency initiative (ET). The initiative focused on four main issues: availability of data as regards end-recipients of EU subsidies; ethics of public office holders; transparency of lobbying activities; and access to documents. On EU subsidies, the Commission established a central web portal, providing links to information on end-recipients. In December 2007 it released a comparative study of codes of conduct for public-office holders. In order improve transparency in lobbying, the Commission set up a voluntary public register in 2007, followed by the establishment of a common code of conduct for all lobbyists in 2008.

¶47. In 2005, the Commission adopted an action plan for simplifying and improving existing EU legislation and reducing the administrative burden on stakeholders within the regulatory process. The EU's Better Regulation policy aims at simplifying and improving existing regulation, to better design new regulation and to reinforce the respect and the effectiveness of the rules, while respecting the EU proportionality principle.

¶48. In its 2007 review of Better Regulation progress, the Commission presented an action program to measure administrative costs and cut administrative burdens of existing EU legislation by 25 percent by 2012 using the EU Standard Cost Model. This would ultimately increase annual GDP by about 1.5 percent, or around 150 billion. The Commission set up a high level expert group on the reduction of administrative burdens to advise it on the implementation of this program.

¶49. The Commission published follow up Strategic Reviews of Better Regulation in the EU in 2008 and 2009, in which it committed to continue to simplify legislation, further reduce administrative costs, increase the use of impact assessments (note: the

Commission carried out over 180 impact assessments in 2008), and help shape global regulation. In 2008, the Commission also strengthened the role of the Impact Assessment Board, and published the "Second Progress Report on the Strategy for Simplifying the Regulatory Environment", an update of the EC's rolling simplification program. The program currently covers around 200 regulations. Some of those initiatives are entirely new (15) and cover various policy areas such as agriculture, automotives, public health, environment and energy. For 2009, the Commission will present 33 new

regulation simplification initiatives. In addition, the European Council, under the Czech Presidency, will conduct a stock-taking exercise of Better Regulation in March 2009.

U.S.-EU Regulatory Cooperation

¶50. Unnecessary regulatory divergences between the United States and EU are the primary source of friction in our bilateral trade and investment relationship. As such, regulatory cooperation to avoid such divergence has intensified significantly since the December 1997 U.S.-EU Summit Agreement on Regulatory Cooperation Principles. We agreed on joint Regulatory Cooperation Guidelines in 2002, and intensified regulatory cooperation in 6 sectors in the first "Roadmap" in 2002; by 2007 such sectoral regulatory cooperation covered 17 sectors. Much of this work is now subsumed under the High Level Regulatory Cooperation Forum, established in 2005 as a place for regulators from many disciplines to exchange best practices. The HLRCF has now met five times (most recently in October 2008) and reports regularly to the cabinet-level TEC.

¶51. Recent key highlights of our bilateral regulatory cooperation include:

--a joint OMB-DG SANCO draft report reviewing the application of EU and U.S. regulatory impact assessment guidelines and their impact on trade and investment (2007). Consequently, both sides are using recommendations from the review to ensure better analysis of and greater transparency about the effects of proposed regulations on international trade and investment.

--closer cooperation between the Consumer Product Safety Commission (CPSC) and DG SANCO in matters of product safety, regulatory issues presented by emerging technologies, impact analysis and risk assessment methodologies, and the use of international standards in regulation (2008).

--CPSC, DG Enterprise, and DG SANCO set up a toy safety working group to discuss toy and children's product import safety related matters (2008).

--CPSC and DG SANCO conducted a series of joint outreach seminars in China on U.S. and EU safety requirements (2008)

--the U.S. agreed to include an international flag in the fall 2008 U.S. Regulatory Plan and Unified Agenda of planned regulatory activities. This flag indicates whether a USG agency expects a regulatory action under development to have an impact on international trade or investment.

--OMB, the U.S. Office of Science and Technology Policy (OSTP) began conversations with DG SANCO to facilitate an international dialogue on risk analysis, leading to OMB-OSTP hosted risk analysis discussions in July, 2008 with representatives from the U.S., EU, and Canada participating. With OMB and OSTP support, DG SANCO built on the summer dialogue by hosting the 1st International Conference on Risk Assessment in Brussels in November, 2008.

--OMB has drafted a document for public comment elaborating how USG agencies should meet their obligations to analyze international effects in regulatory impact analyses for proposed final rulemaking.

EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT

¶52. The EU Treaty specifically prohibits restrictions on capital movements and payments between the Member States and between the Member States and third countries.

¶53. The single market project has spurred efforts to establish EU-wide capital markets. The EU has acted to implement the 1999 Financial Services Action Plan (FSAP) to establish legal frameworks for integrated financial services (banking, equity, bond and insurance) markets within the EU. By the end of 2008, the EU had adopted and almost fully implemented 43 of the 45 measures to increase market and regulatory efficiency and increase coordination among Member State supervisory and regulatory authorities, and has acted to implement the remaining two measures. The Commission has commissioned a study that is expected to be released in early 2009 assessing implementation of the FSAP.

¶54. FSAP measures include Directives on: Prospectuses (permitting one approved prospectus to be used throughout the EU), Transparency (detailing reporting requirements for listed firms, including adoption of International Accounting Standards), Markets in Financial Instruments (MiFID - providing framework rules for securities exchanges and investment firms) and Takeover Bids (to facilitate cross-border takeovers), and Capital Requirement (implementing the Basel II Accord).

¶55. Accounting Equivalence: On December 12 2008, the European Commission granted equivalence to the Generally Accepted Accounting Principles (GAAPs) of certain third countries (including the U.S.) as from January 2009. As a result, foreign companies listed on EU markets will continue to be able to file their financial statements prepared in accordance with those GAAPs beyond the transitional period expiring at the end of 2008.

¶56. Review of the Prospectus and Transparency Directives: A Commission review of the Prospectuses and Transparency Directives is currently underway. In addition to including provisions implementing the US, Japan, China, Canada, South Korea and India GAAPs equivalence to International Financial Reporting Standards (IFRS) as adopted by the EU, on January 9 2009, the Commission submitted to public consultation a proposal to review Directives 2003/71/EC and 2004/109/EC addressing: (1) the definition of qualified investors; (2) the revision of exempt offers (including employee shares schemes); (3) the revision of annual disclosure obligation; (4) the time limit for exercising the right of withdrawal; (5) certain thresholds of the Directives; (6) the effectiveness of the prospectus summary; (7) the disclosure requirements for offers with Government guarantee schemes; and (8) the disclosure requirements for small quoted companies and for rights issues. A final proposal is expected to be submitted to Parliament and Council during the summer of 2009.

¶57. Review of the Capital Requirement Directive (CRD): On 1 October 2008, the Commission submitted a proposal to amend the Capital Requirement Directive (CRD) by: (1) requiring banking institutions to hold a higher amount of capital to protect themselves against the risk of default; (2) creating ad-hoc Colleges of Supervisors that will supervise banks with cross-border operations; and (3) requiring financial institutions that originate securitized products to retain 5% of the securities. Inter-

institutional negotiations are underway to achieve single reading adoption by April 2009.

¶58. Solvency II: In July 2007, the Commission proposed a Framework Directive to consolidate existing legislation in the insurance sector and broadening requirements for the financial position and solvency of insurance businesses in the EU

(Insurance Solvency II). This Directive contains some provisions that would require insurance companies from third countries to post higher capital if their home country regulatory structure is not deemed "equivalent" to the one created by Solvency II for Europe. The Directive introduces the principles of Group supervision, strengthening the powers of the home regulator, and of Group support, which allow branches to benefit from the support of the group to meet their capital requirements. The Commission still hopes for European Parliament and Council approval of Solvency II in 2009, with adoption of implementing measures to occur in 2010 and transposition into national law completed by 2012, although the two institutions are deeply divided on the issues of Group support and Group supervision, which are supported by the Parliament but have been rejected by the Council.

¶59. Reform of mutual funds oversight: On 13 January 2009 the European Parliament adopted legislation reforming the UCITS Directive to achieve a less fragmented and more efficient investment fund market in the EU. UCITS -- Undertakings for Collective Investment in Transferable Securities -- are investment funds sold under a common set of EU rules for investor protection and cost transparency, and that meet basic requirements on organization, management and oversight of funds. UCITS funds manage approximately 6.4 trillion and account for 11.5% of EU household financial assets. The legislation includes a provision for a management "passport," Qich will make it easier and less expensive for investment funds to operate outside their state of origin. The legislation needs now to be formally approved by Council, and implemented by Member States by 2011.

¶60. Sovereign wealth funds: The Commission outlined its approach to Sovereign Wealth Funds (SWFs) in its In February 2008 Communication. The EU intends to keep markets open for foreign capital, support multilateral efforts (such as those which have been conducted by the IMF and the OECD), rely on existing laws, respect the EC Treaty, and ensure proportionality and transparency. The EU has since supported the IMF work stream that produced the Santiago principles for SWFs in October 2008, and the OECD parallel work stream that in June 2008 led to the first declaration on a framework for recipient countries. A final OECD report on the issue is expected towards the middle of 2009.

¶61. Retail Services: The EU has also focused on deepening integration of retail financial services markets, although this has become less immediate as a result of the financial crisis. In November 2005, the Commission issued a new Legal Framework for Cross-Border Payments in the EU. In May 2007, the Commission issued a Green Paper laying out goals and launching a debate on future EU policy on retail financial services. In November 2007, the Commission released a package of initiatives to modernize the EU single market, including initiatives to increase consumer choice of banking services, facilitate switching of banking accounts,

complete the development of the Single Euro Payments Area (SEPA), and improve transparency of retail investment products. Work in all the above areas is continuing as scheduled, though is no longer an immediate concern.

¶62. The transposition into national law of the Payment Services Directive, SEPA's legal basis, is on track, according to the Commission, and should be completed by 1 November 2009. The initiative enjoys broad support from the industry, and the Commission expect that as of November 2009 the cost of a cross-border direct debit in euro will become the same as the cost of a national direct debit, as it is already the case with credit transfers, ATM cash withdrawals and card payments.

¶63. On 1 December 2008, the banking industry took up the Commission's invitation and adopted a set of 'Common Principles for Bank Account Switching'.

According to the Principles, if a consumer wishes to change bank, within the same Member State, the new bank will act as the primary contact point and offer its assistance throughout the switching process. The Principles will apply in each Member State beginning 1 November 2009.

Financial supervision

¶64. As a result of the current financial crisis, a deep international debate has started on how to update the current supervisory architecture in order to detect and prevent future crisis. The EU is involved directly and indirectly through its Member States' participation in international bodies (G-20, FSF, G-8). The Commission has proposed a number of regulatory measures that directly affect the way in which financial supervision at EU level will be carried out in the future (Solvency II, CRD, CRA).

¶65. Bank supervision authority and enforcement remains a Member State competence. However, three EU-wide communities of sectoral financial supervisors were created to facilitate efficient and comparable rule making throughout the EU. These are: the Committee of European Bank Supervisors (CEBS), composed of Member State supervisors; CESR, the Committee of European Securities Regulators; and CEIOPS, the Committee of European Insurance and Occupational Pensions Supervisors. Financial market turmoil in the second half of 2007 increased discussion among EU institutions of ways to strengthen mechanisms to coordinate financial supervision across the EU.

¶66. Review of the decisions setting up the committees of supervisors: At the beginning of 2009 the Commission is expected to publish its proposal for the revision of the Commission Decisions establishing CESR, CEBS and CEIOPS. The revision is expected to strengthen the role of the Committees and to include the requirement for each national supervisor to include in its statutes a European dimension, to introduce qualified majority voting for decision-making and to adopt annual work-programs to enhance the Committees' accountability towards EU institutions.

¶67. Banking supervision is also being addressed by the provisions of the proposal to review the Capital Requirement Directive, through its focus on establishing Colleges of Supervisors to oversee the cross-border banking institutions. CEBS will have a pivotal role. Adoption of the legislation is

forecasted for April 2009, but negotiations between Council and Parliament are on-going.

¶68. The supervision of insurance groups is addressed in the Solvency II proposal, introducing the principles of Group supervision, which strengthen the powers of the home regulator, and of Group support, which allow branches to benefit from the support of the group to meet their capital requirements. There are still important differences between Council and Parliament, but supporters of the legislation hope for approval by April 2009.

¶69. De LaRosiere group: In October 2008, EC President Barroso established a high-level group on cross border financial supervision. The group, chaired by former IMF Managing Director Jacques de Larosiere, is expected to present its report in March 2009. The aim of the panel is to suggest ways to restructure and reform supervision in a way which is adequate for the common European market, but also bearing in mind the need to collaborate on supervisory issues in the global context. The De Larosiere report will likely also serve as the basis for the EU contribution to the G-20 meeting in April.

¶70. In addition, European monetary union gives the European Central Bank limited authority over the banking system in the 16-member Euro zone in certain areas, including the issuance of Euro currency, banking statistics, a smooth payments system, and

advising on banking supervision.

Additional information is available at: http://ec.europa.eu/internal_market/finances/ actionp lan/index_en.htm.

POLITICAL VIOLENCE

¶71. Political violence is not unknown in the European Union, but it is, in general, extremely rare. Such incidents are almost always regional in nature, and individual Country Commercial Guides should be consulted for more details on problems in specific regions.

CORRUPTION

¶72. Per EU Treaty Article 280 (5), the EU and the Member States are jointly responsible for the fight against fraud and corruption affecting the EU's financial interests. A detailed overview of EU and Member State achievements in this regard (e.g., increasing EU capacity to conduct anti-fraud investigations, greater cooperation with international partners) is provided in the EU's Anti-Fraud Office (OLAF) most recent annual report (for Year 2007) on the fight against fraud.

This report is available online at the EU's Anti-Fraud Office website: http://ec.europa.eu/anti_fraud/reports/olaf/2 007/en. pdf

The report broadly outlines the developments that the Community has taken in terms of protecting its financial interests and addressing fraud. An overview is given of the major developments in 2007.

BILATERAL INVESTMENT AGREEMENTS

¶73. The EU does not yet have any bilateral investment treaties in the traditional sense, although virtually all Member States have extensive networks of such treaties with third countries. However, the EU's "Europe," "Association" and other such agreements with preferential trading partners often contain provisions directly addressing the treatment of investment, generally providing at least for establishment, and repatriation of capital and profits. In the context of EU enlargement negotiations, the U.S. Government has conveyed to the EU its concern that U.S. bilateral investment treaties with accession countries should not be adversely affected.

¶74. Other regional or multilateral agreements addressing the admission of investors to which the Community and/or Member States have adhered include:

The OECD codes of liberalization, which provide for non-discrimination and standstill for establishment and capital movements, including foreign direct investment;

The Energy Charter Treaty (ECT), which contains a "best efforts" national treatment clause for the making of investments in the energy sector; and, The GATS, which contains an MFN obligation on all measures affecting the supply of services, including in relation to the mode of commercial presence.

¶75. In November 2007, the U.S. and the European Commission formally launched a bilateral investment dialogue to reduce barriers to transatlantic investment and promote open investment regimes globally (see Openness to Foreign Investment above).

OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

¶76. OPIC programs are not available in the EU, as a whole, although individual Member States have benefited from such coverage.

LABOR

¶77. Issues such as employment, worker training, and social benefits remain primarily the responsibility of EU Member States. However, Member States are coordinating ever more closely their efforts to increase employment through macroeconomic policy cooperation, guidelines for action, exchange of best practices, and support from various EU programs. The best information regarding conditions in individual countries is available through the labor and social ministries of the Member States.

¶78. Helpful information from the EU can be found on websites for the European Commission's Directorate-General for Employment and Social Affairs, (http://ec.europa.eu/dgs/employment_social/in dex_en. htm), and on the Eurostat website (http://epp.eurostat.ec.europa.eu/portal/page ?_pagei d=1090,30070682,1090_33076576&_dad=portal&_sc hema=PO RTAL).

¶79. In general, the labor force in EU countries is highly skilled and offers virtually any specialty required. Member States regulate labor-management relations, and employees enjoy strong protection. Member States have among the highest rates of ratification and implementation of ILO conventions

in the world.

¶80. There is a strong tradition of labor unionism in most Member States. In many cases, the tradition is stronger than the modern reality. While Nordic Member States (Denmark, Finland, and Sweden) still have high levels of membership in labor unions, several large Member States, notably Germany and the United Kingdom, have seen their levels of organization drop nearly to U.S. levels (around 20-30 percent). French labor union membership, at less than 10 percent of the workforce, is lower than that of the U.S.

FOREIGN-TRADE ZONES/FREE PORTS

¶81. European Union law provides that Member States may designate parts of the Customs Territory of the Community as free trade zones and free warehouses. Information on free trade zones and free warehouses is contained in Title IV, Chapter Three, of Council Regulation (EEC) no. 2913/92 establishing the Community Customs Code, titled, "Free Zones and Free Warehouses" (Articles 166 through 182).

¶82. Article 166 states that free zones and free warehouses are part of the Customs Territory of the Community or premises situated in that territory and separated from the rest of it in which:

Community goods are considered, for the purposes of import duties and commercial policy import measures, as not being on Community customs territory, provided they are not released for free circulation or placed under another customs procedure or used or consumed under conditions other than those provided for in customs regulations;

Community goods for which such provision is made under Community legislation governing specific fields qualify, by virtue of being placed in a free zone or free warehouse, for measures normally attaching to the export of goods.

Articles 167-182 detail the customs control procedures, how goods are placed in or removed from free zones and free warehouses and their operation.

¶83. The use of free trade zones varies from Member State to Member State. For example, Germany maintains a number of free ports or free zones within a port that are roughly equivalent to U.S. foreign-trade zones, whereas Belgium has none. A full list of EU free trade zones last updated September 2007 is available online at:

http://ec.europa.eu/taxation_customs/resource s/docum ents/customs/procedural_aspects/imports/free_ zones/l ist_freezones.pdf.

FOREIGN DIRECT INVESTMENT STATISTICS

¶84. According to U.S. statistics (the U.S. Bureau of Economic Analysis), the value of U.S. investment in the Member States of the European Union, on a historical-cost basis as of the end of 2007, was just over USD $1.38 trillion, up from $1.23 trillion at the end of 2006. The United Kingdom was the major EU host to U.S. foreign direct investment, with $399 billion, followed by the Netherlands ($370 billion), Luxembourg ($114 billion), and Germany ($107 billion).

For virtually all EU Member States, the largest "foreign" investors are in fact from other Member States. More statistics on U.S. investment abroad are available at:
http://www.bea.gov/international/datatables/u sdpos/u sdpos_07.htm

WEB RESOURCES

Internal Market DG Q Financial Services Unit
http://ec.europa.eu/internal_market/finances/ actionp lan/index_en.htm

Economic and Financial Affairs DG
http://ec.europa.eu/economy_finance/index_en. htm

Employment and Social Affairs DG
http://ec.europa.eu/dgs/employment_social/ind ex_en.h tm

Office for Harmonization in the Internal Market
http://oami.europa.eu/

EU Anti-Fraud Office
http://ec.europa.eu/anti_fraud/index_en.html

Eurostat Q EU Statistical Office
http://epp.eurostat.ec.europa.eu/portal/page? _pageid =1090,30070682,1090_33076576&_dad=portal&_sch ema=POR TAL

U.S. Bureau of Economic Analysis Q Department of Commerce
http://www.bea.gov

European Patent Office
http://www.epo.org/index.html
MURRAY